

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMMISSION'S)	
COMBINED CONSIDERATION OF THE)	
UTILIZATION OF ADVANCED METERING)	
TECHNOLOGIES UNDER 26 DEL. C.)	
§ 1008(b)(1)b. AND THE IMPLEMENTATION)	PSC REGULATION DOCKET NO. 57
OF FEDERAL STANDARDS FOR TIME-BASED)	
METERING AND TIME-BASED RATE)	
SCHEDULES UNDER 16 U.S.C. §§ 2621(d))	
(14) AND 2625(i))	
(OPENED MAY 9, 2006))	

ORDER NO. 6912

This 9th day of May, 2006, the Commission determines and Orders the following:

1. The provisions of 26 Del. C. § 1008(b)(1)b.,¹ tell this Commission to initiate a proceeding to "evaluate the desirability, feasibility, and cost-effectiveness of requiring advanced metering technology, including time of use metering, to be used throughout or selectively in the service territories [sic] of [Delmarva Power & Light Company]." This must be done by June 5, 2006. Somewhat similarly, federal law - in the form of 2005 amendments to the Public Utility Regulatory Policies Act of 1978 ("PURPA") - directs state utility commissions (such as this one) to consider whether to have regulated electric utilities (and retail electric suppliers) implement a new PURPA standard related to "Time-Based Metering and

¹as added by the Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws ch. 242 § 7 (April 6, 2006) (§ 1008(b)(1)").

Communications.”² Moreover, while the language of the state mandate focuses on the feasibility of deploying advanced metering technology, the state provision recognizes that such inquiry also encompasses an evaluation of time-based rate structures.³ Conversely, while the new federal standard speaks in terms of utilities offering each customer (within every class) the option of a time-based rate schedule, consideration of that standard necessarily entails exploring the implementation of time-based meters for those utility customers.⁴ The deployment of time-based meters and the use of time-based or load-factor schedules necessarily go hand-in-hand; one can hardly be beneficial without the other.

²See 16 U.S.C. §§ 2621(d)(14) & 2625(b)(i), both added by the Energy Policy Act of 2005, Pub. L. No. 109-58 § 1252(a), (b), 119 Stat. 594, (2005) (“EPAAct 2005”). Under the PURPA amendments, a state commission must initiate its proceeding to consider the Time-Based Metering standard by August 8, 2006, and must make its determinations by February 1, 2007. 16 U.S.C. §§ 2621(d)(14)(F); 2622(b)(4), (c), all added by EPAAct 2005 § 1252(a), (g), & (h). Of course, a state commission may determine that the proposed federal standard is not appropriate for implementation. See 16 U.S.C. § 2621(a).

³See 26 Del. C. § 1008(b)(1)b. (in evaluating advanced metering deployment, the Commission “shall review all customer pricing implications of any particular metering technology investigated”). See also 26 Del. C. § 1008(b)(1) (demand-side management programs to be designed “to reduce overall electricity consumption by [DP&L’s] customers and/or to reduce usage by customers during peak periods, such as time of use rates, advanced metering infrastructure . . .”). However, the 2006 state law amendments seemingly bar the Commission from approving “peak time billing” for use by either Delmarva Power & Light Company (“DP&L”) or the Delaware Electric Cooperative, Inc. (“DEC”). Similarly, the new state law precludes the Commission from permitting use of “30-day peak demand billing” even if time-based metering technology might eventually be deployed. 26 Del. C. § 1008(b)(1)b.

⁴See 16 U.S.C. §§ 2621(d)(14)(B), (C) (listing types of time-based rate schedules that may be offered in conjunction with provision of time-based meters); 2625(i) (time-based rate schedule standard includes investigation into deployment of time-based meters). The federal standard includes “critical peak pricing” as one of the time-based rate schedules that might be considered. 16 U.S.C. § 2621(d)(14)(B)(ii).

2. The Commission now initiates this docket and proceeding to perform the evaluation required by § 1008(b)(1)b. At the same time, and in the same proceeding, the Commission will also concurrently "consider" the newly proposed "Time-Based Metering and Communications" standard under PURPA. While the two directives for this proceeding come from differing sources, and may differ in scope and some details, they both share the same focus: a Commission review of the benefits, and costs, that might flow from the widespread deployment of time-based metering that allows customers to monitor and manage electric consumption.

3. In doing so, the Commission does note that, currently, DP&L does provide several time-based rate schedules for customers within its Medium, General, and Large service classifications. Those rate schedules depend on the use of demand, or in some instances, interval metering. DP&L also now provides "Hourly Priced" (i.e., "real-time" priced) Standard Offer Service to GS-T customers as well as electing GS-P customers. Finally, for several years, DP&L's tariff has included several time-of-use rate schedules that are available to a small pool of its residential class of customers that utilize time-based meters. Staff reports that, as of now, participation in such pilot program is minimal.⁵

4. Both the state and federal directives come with some procedural requirements. Section 1008(b)(1)b. calls for "hearings" to

⁵As part of the merger settlement approved by PSC Order No. 5941 (Apr. 16, 2002), DP&L agreed to work with Staff and other interested parties to initiate a pilot program designed to test the efficiency of various metering technologies. The pilot program was put on a hold earlier in anticipation of a more encompassing advanced metering investigation.

precede any Commission determination to require any deployment of advance metering technology throughout, or selectively within, DP&L's service area.⁶ PURPA announces its own set of procedural prerequisites that must surround a state commission's determination whether to adopt or reject any federally proposed standard.⁷ By this Order, the Commission initiates "the docket" and sends the matter to a designated Hearing Examiner. He is to conduct further proceedings to culminate in a Report with recommendations. The Commission leaves it to the Hearing Examiner to ensure that, going-forward, the proceedings comply with the notice, participation, and record-making requirements imposed by both State law and PURPA.

5. The Commission does note one issue concerning the scope of the proceeding. The investigation under § 1008(b)(1)b. relates to the use of advanced metering technologies in the "service territories [sic]" of DP&L. The Electric Utility Retail Customer Supply Act does not explicitly call for a similar investigation into the use of time-based metering in the areas served by DEC, this State's other electric distribution company. Rather, the State Act directs that DEC, "at a minimum," must "maintain its current efforts in providing Demand-Side management programs" and must provide an initial report about its Demand-Side management efforts to the Commission, the Legislature, and the executive branch by January 31, 2007.⁸ In contrast, under PURPA,

⁶See 26 Del. C. § 1008(b)(1)b.

⁷See 16 U.S.C. §§ 2621(b), 2631 & 2632.

⁸See 26 Del. C. § 1008(b)(2), as added by the Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws ch. 242 § 7 (April 6, 2006).

the Commission must consider the proposed federal time-based metering standard "with respect to each electric utility for which [the Commission] has rate-making authority."⁹ This language would seemingly include DEC, which is subject to the Commission's rate-making authority in its roles as a distribution utility and Standard Offer service supplier. However, the 2005 amendments to PURPA set forth a number of "prior State actions" that exempt the state commission from having to consider the new time-based metering Standard.¹⁰ The Commission leaves it to DEC to decide whether it wishes to advance the position that it is not subject to the PURPA time-based metering proceeding. Similarly, it is left to DEC to decide whether it wishes to argue that the provisions in the Retail Customer Supply Act pre-ordain the Commission's decision with respect to the federal Standard's application to DEC's ratepayers. If DEC asserts either of such positions, the Hearing Examiner can determine how such questions can best be addressed - initially by him, and eventually by the Commission - consistent with the PURPA procedural requirements.

Now, therefore, **IT IS ORDERED:**

1. That this docket, and proceeding, is hereby opened to allow the Commission to consider and evaluate the desirability, feasibility,

⁹See 16 U.S.C. §§ 2621(a), 2625(a). DEC presumably meets the retail sales threshold under PURPA (16 U.S.C. § 2612(a)). See PSC Order No. 3685 (Oct. 26, 1993) (considering application of earlier PURPA standards to DEC). Also, the new federal standard for time-based meters and rate schedules would apply in the case of supply provided by retail electric suppliers. 16 U.S.C. § 2621(d)(14)(E), as added by EPAAct 2005 § 1252(a).

¹⁰See 16 U.S.C. § 2622(e), as added by EPAAct 2005 § 1252(i)(1).

and cost-effectiveness of requiring advanced metering technology (including time-based metering), to be utilized throughout, or selectively within, the service territory of Delmarva Power & Light Company. Such proceeding is commenced under the directives set forth in 26 Del. C. § 1008(b)(1)b.

2. That, in this docket, and as part of the proceeding, the Commission shall (with respect to each electric utility for which it has rate-making authority) also concurrently consider and determine whether it is appropriate for jurisdictional electric utilities and retail electric suppliers to implement the federal standard established by 16 U.S.C. § 2621(d)(14), as added by the Energy Policy Act of 2005. In making such determination, the Commission will, in this matter, undertake the investigation and enter the decision related to the provision of time-based metering as described in 16 U.S.C. § 2625(i), as added by the Energy Policy Act of 2005.

3. That, pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, William F. O'Brien is assigned as the Hearing Examiner for this docket. Senior Hearing Examiner O'Brien shall conduct such procedures and hearings as may be necessary to construct a record complete enough for the Commission to make the determinations required by 26 Del. C. § 1008(b)(1)b. and 16 U.S.C. §§ 2621(d)(14) & 2625(i). Senior Hearing Examiner O'Brien shall conduct such proceedings in accord with the notice and other procedural requisites imposed by State law and those required under the Public Utility Regulatory Policies Act of 1978, as amended. Senior Hearing Examiner O'Brien is delegated the authority, under 26 Del. C. § 102A, to determine the manner and content of any

needed, or appropriate, public notice. Senior Hearing Examiner O'Brien is also delegated the authority to grant or deny petitions to intervene. After the compilation of the record (with the opportunity for full participation), Senior Hearing Examiner O'Brien shall submit a Report with his proposed findings and recommendations concerning: (a) the feasibility of utilizing advanced metering technology (with attendant time-based rate schedules) as called for by 26 Del. C. § 1008(b)(1)b.; (b) the adoption (in whole or in part) of the time-based metering standard set forth in 16 U.S.C. §§ 2621(d)(14); and (c) the feasibility for regulated utilities to install time-based meters and communication devices for each of their customers as described in 16 U.S.C. § 2625(i).

4. That Senior Hearing Examiner O'Brien shall endeavor to compile the record and submit his Report in sufficient time to allow the Commission to make final determinations in this docket related to the feasibility of time-based metering before February 8, 2007.

5. That, the Secretary shall publish the notice attached hereto as Exhibit "A," in the following newspapers on the described dates:

The News Journal (May 15, 2006)

Delaware State News (May 16, 2006)

The Secretary shall promptly file proof of such publications in this docket. The Secretary shall also transmit a copy of such notice to the Delaware Registrar of Regulations for publication in the next edition of the Delaware Register of Regulations. In addition, the

Secretary shall send a copy of this Order (with the attached notice), by United States mail, to the following:

- (a) The Division of the Public Advocate;
- (b) Delmarva Power & Light Company;
- (c) Delaware Electric Cooperative, Inc.;
- (d) Delaware Energy Office;
- (e) all electric suppliers currently holding certificates from this Commission;
- (f) all persons who have previously requested notice of rule-makings.

Finally, the Secretary shall post a copy of the notice on the Commission's Internet website under an appropriate heading with a link to this Order.

6. That James McC. Geddes, Esquire, is designated Rate Counsel for this matter.

7. That, pursuant to 26 Del. C. §§ 114 and 1012(c)(2), all electric distribution companies and electric suppliers are notified that they will be charged the costs of this proceeding.

8. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

PSC Regulation Docket No. 57, Order No. 6912 Cont'd.

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

NOTICE OF INITIATION OF TIME-BASED METERING
PROCEEDING

Pursuant to the provisions of 26 Del. C. §1008(b)(1)b., as added by the Electric Utility Retail Customer Supply Act of 2006 (75 Del. Laws ch. 242 (2006)), the Public Service Commission ("PSC") must initiate a proceeding to consider the desirability, feasibility, and cost-effectiveness of requiring advanced metering technology (with time-based rate schedules) to be utilized throughout, or selectively within, the electric service territory of Delmarva Power & Light Company ("DP&L"). Similarly, under the provisions of 16 U.S.C. §§ 2621(d)(14) and 2625(i), as added by the federal Energy Policy Act of 2005 (Pub. L. No. 109-58 (2005)), the PSC is charged to consider whether regulated electric utilities and third-party electric suppliers should be required to adhere to a federal Standard that all electric customers be afforded the option of a time-based rate

schedule that, in conjunction with time-based meters, would allow the customer to manage energy use and hence the resulting charges under such time-based rate schedule. This Standard, if adopted, might apply to customers of Delmarva Power & Light Company, the Delaware Electric Cooperative, Inc., and competitive electric suppliers.

By PSC Order No. 6912 (May 9, 2006), the PSC initiated the above-captioned proceeding to undertake, concurrently, the investigations called for by the above state and federal laws. If you wish to participate in this proceeding, you must file a petition for intervention under Rule 11 of the Commission's Rules of Practice and Procedure. Such petition should be filed with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: Reg. Dckt. No. 57

You may, but are not required to, file comments with your petition. *You must file your petition on or before Tuesday, June 15, 2006.* After that date, the PSC's designated Hearing Examiner will, after consultation with PSC Staff and the parties, determine the course of further proceedings in this matter.

You can review Order No. 6912 at the PSC's office in Dover or at the PSC's Internet website located at www.state.de.us/delpsc. If you have questions, please call the Commission at (800) 282-8574 (in-State only) or (302) 739-4247 (including text telephone). Inquiries can also be sent by Internet e-mail to janis.dillard@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.